

AMENDMENT under 37 C.F.R. § 1.111
U.S. Appl. No. 09/385,607

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings include changes to Figs 1 and 2. In both Figs. 1 and 2, element 26 has been changed from "μP" to read "microprocessor." Additionally, in Fig. 2, element 44 is amended to include "Indicia of Credit Card/ Signature/ Cardholder" to address issues raised in the Office Action. All three replacement sheets (Figs. 1-3) are provided in formal nature to address informalities noted by the Office Action. No new matter is believed to be included.

Attachments: Replacement Sheets 1-3

Annotated Sheets 1-2 showing changes to Figs. 1 and 2.

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REMARKS

Claims 1-21 are pending in the application. Claims 1-21 stand rejected. Reconsideration and allowance of all pending claims are respectfully requested in view of the remarks that follow.

OBJECTIONS.

DRAWINGS

The Office Action continues to object to the drawings because: (i) it is alleged the indicia claimed in claims 1 and 11 are not shown in the drawings in accordance with 37 C.F.R. § 1.83(a) and (ii) the drawings are informal due to hand written reference numerals.

By the forgoing amendments to the drawings, Applicant believes these concerns have been fully addressed. It is noted however, with respect to the Examiner's statement on page 4, ll. 2-3 of the Office Action, element 32 of Fig. 1, is not pertinent to the referenced limitations in the embodiment of claims 1 and 11, as the identifying indicia 32 of the Fig. 1 embodiment is associated with the modem *during the manufacture* of the modem circuitry. (See, pg. 11, ll. 11-14, claim 2, and pg. 12, ll. 16-17).

The Examiner is respectfully requested to accept the proposed drawing changes and indicate the same in the next official communication. In view of the foregoing, reconsideration of the objections of record is respectfully requested.

SPECIFICATION

The Office Action continues to object to the Abstract and Title for various reasons. However, the Office Action fails to address or even reference the amendments or arguments

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rebutting these objections in Applicant's previous response. (In fact, Applicant amended the Title nearly identical to the Examiner's suggestion). Applicant assumes the continued objections are merely an oversight in the present Office Action. If however, they are not, the Examiner is kindly requested to specifically address the arguments/amendments rebutting these rejections in the previous response.

CLAIM REJECTIONS.

35 U.S.C. § 112 (First Paragraph)

Claims 1-21 are finally rejected under 35 U.S.C. § 112 first paragraph as not complying with the written description requirement. Applicant respectfully traverses this rejection for the following reasons.

The Office Action continues to allege there is no support in the specification for the limitations in claims 1 and 11; specifically, that there is no support that the claimed graphics data could include separate images of a credit card, a signature or an account holder. The Office Action readily admits that the indicia disclosed in one embodiment of Applicant's specification include a combination of these three types of indicia. (Specification pg. 13, ll. 23 to pg. 14, ll. 1-2). However, it is essentially alleged by the Office Action that the skilled artisan would not understand these image data could be used individually as claimed in claims 1 and 11.

Applicant continues to traverse this rejection on the grounds that, in view of Applicant's original specification and claims (as opposed to what is old and well known in the art) the skilled artisan would readily recognize that all three types of indicia would not be required to obtain the advantages discussed in Applicant's specification and that these indicia could be used individually or in any combination for identification purposes. Applicant vehemently denies the Examiner's allegation that Applicant ever admitted "the use of these types of image data individually is a step that is old and well known in the art." (3/24/05 Office Action pg. 3, ll. 16-

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17). The Office Action appears to misunderstand the requirements for establishing a *prima facie* rejection under 35 U.S.C. § 112, first paragraph.

As Applicant previously pointed out, *In re Wertheim*, 541 F.2d 257, 262 (CCPA 1976) and MPEP 2163.04 makes it clear that the burden is on the Examiner to establish a *prima facie* case by evidence or reasoning why persons skilled in the art would not recognize in the [Applicant's] disclosure a description of the invention defined by the claims.

In response, the Office Action appears to discount the Court of Customs and Patent Appeals longstanding precedent which interpreted (as opposed to preempting) the written description requirement of the first paragraph of 35 U.S.C. § 112 to require that this showing be met. To date, this burden has not been met and the Office Actions have not even attempted to address the critical element of why the skilled artisan would not recognize what is claimed from the original disclosure.

Applicant further points out that these limitations were individually presented by claim amendments (e.g., new claims 22-27), which, not only were entered into the record by the previous examiner (having signature authority) without objection, but were also indicated as including allowable subject matter. (See Applicant's amendment of December 17, 2003 and subsequent Office Action dated March 12, 2004). Now, after Applicant has amended the claims of this application based on the previous examination record, these claim limitations are suddenly unacceptable. Respectfully, Applicant believes it should be entitled to a reasonable degree of consistency in examination of this application.

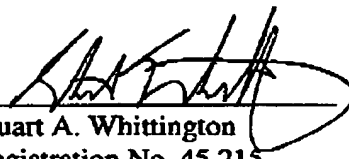
For the foregoing reasons, Applicant believes a *prima facie* case of failure to satisfy the written description requirement of 112, first paragraph has not been established and reconsideration and withdrawal of the 112 first paragraph rejection is respectfully requested.

CONCLUSION.

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In view of the foregoing, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee or deficiency thereof, except for the Issue Fee, is to be charged to **Deposit Account # 50-0221.**

Respectfully submitted,


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Date: June 23, 2005

Appl. No. 09/385,607
Reply to Office Action of March 24, 2005
ANNOTATED SHEET SHOWING CHANGES

1/3

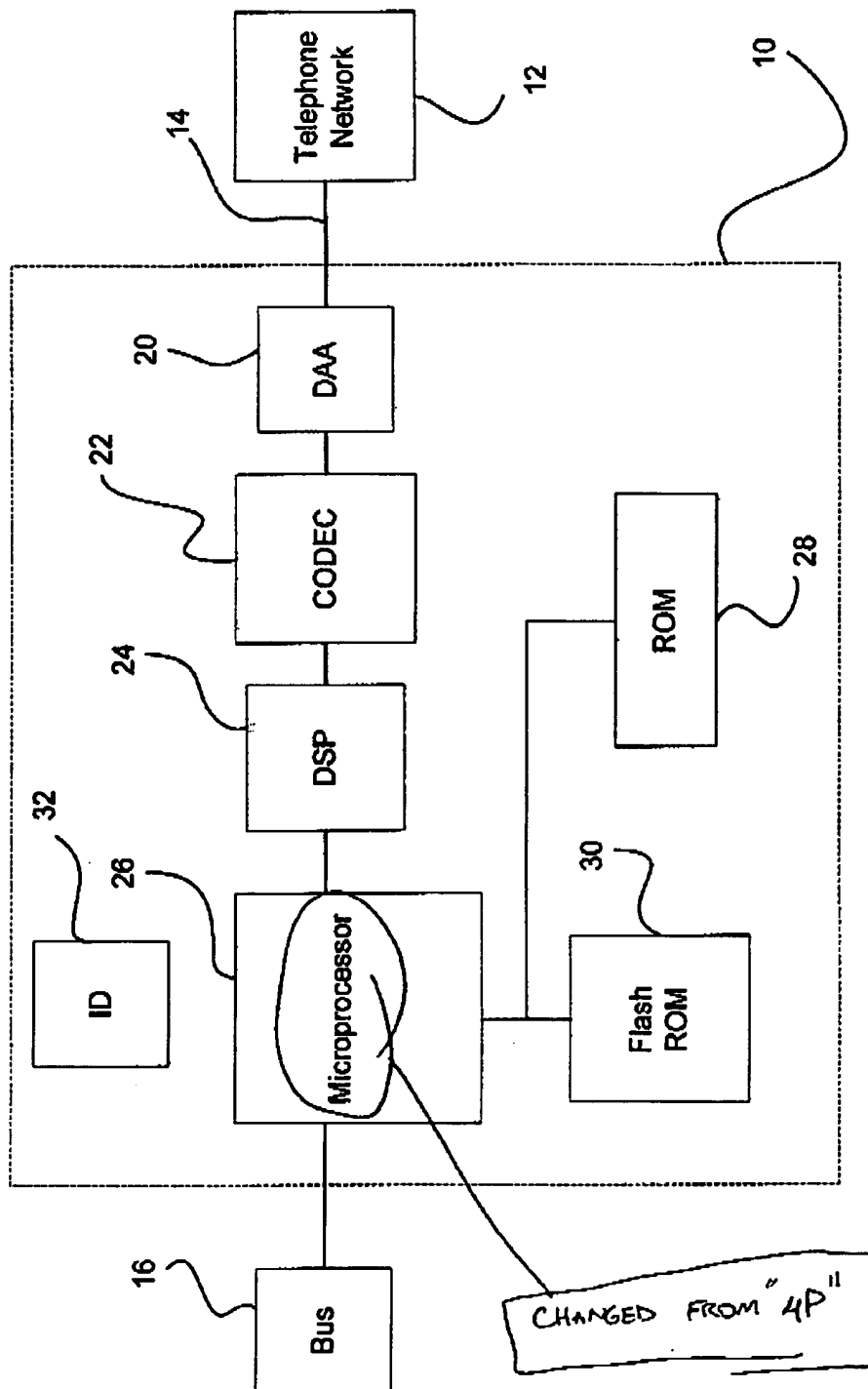


FIG. 1

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Reply to Office Action of March 24, 2005
ANNOTATED SHEET SHOWING CHANGES

2/3

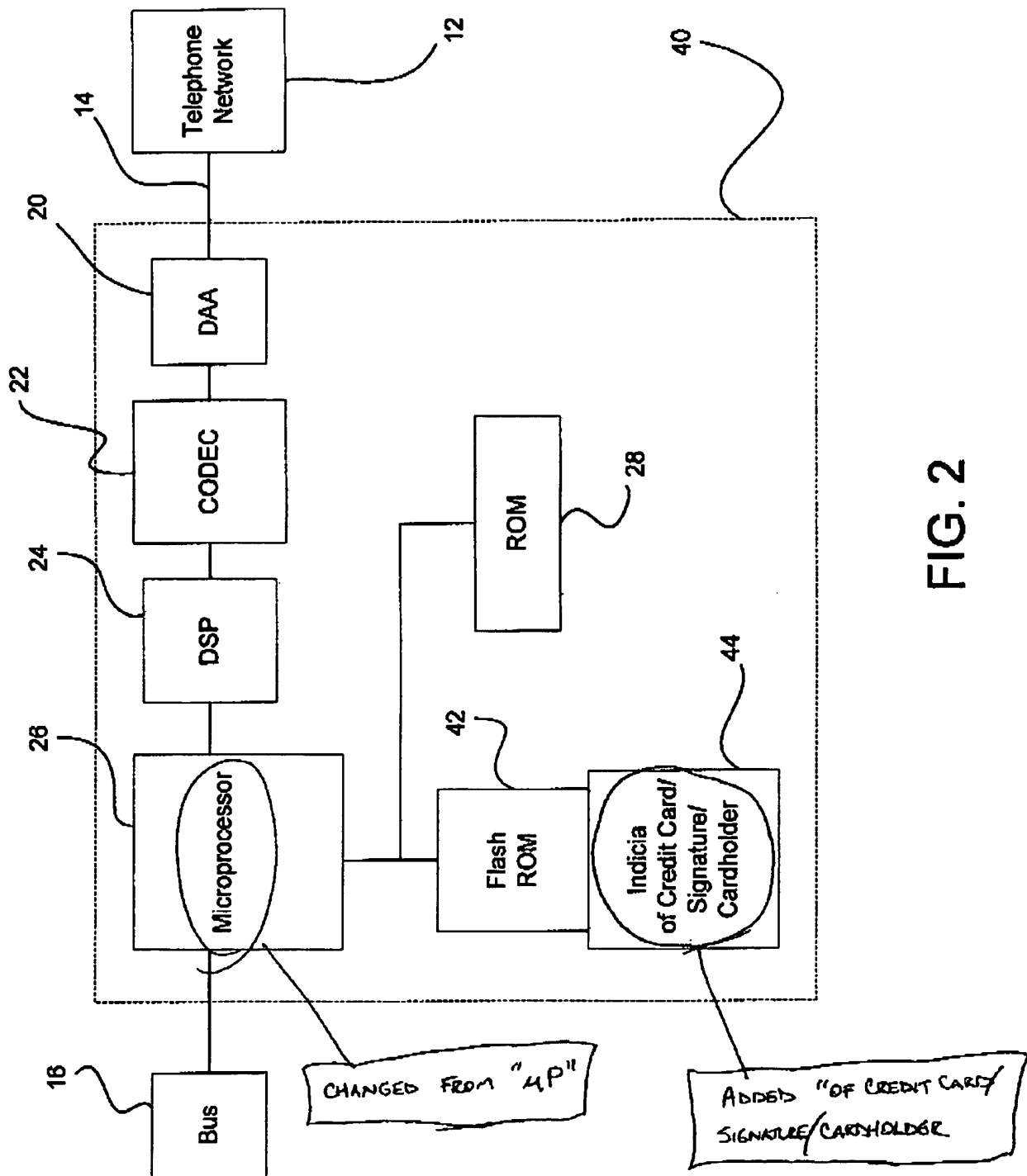


FIG. 2